Supreme Court, U.S.
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No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1993

CURTIS J. MCNARON - PETITIONER

VS.

JESSE BROWN
SECRETARY OF VETERANS AFFAIRS - RESPONDENT

PETITION FOR WRIT OF CERTIORARI

TO THE UNITED STATES COURT OF APPEALS

FOR THE FEDERAL CIRCUIT

PETITION FOR WRIT OF CERTIORARI

CURTIS J. MCNARON
3407 RITTER ST.
RICHMOND, VA 23234
(804) 230-4735

126 pp

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QUESTION PRESENTED

Is due process violated when: section 7292(d)(2) of Title 38 of the U.S. Code asserts denial of review of findings of fact, and the review of the application of a law to the facts of a particular case which facts are plausibly disputable, and which application is purposefully discriminating, applying only to a limited "territory" ("field of knowledge or interest") with no overriding national interest; section 7266(a) of Title 38 of the U.S. Code asserts an inflexible procedure universally applicable to every imaginable situation, risking erroneous deprivation of access to courts, negating redress of grievances of an unjustifiable discrimination, establishing circumstances violative of a meaningful time for notice of appeal, resulting in protected unfairness?

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NO._____

IN THE SUPREME COURT

OF THE

UNITED STATES OF AMERICA

October Term, 1993

CURTIS J. MCNARON, PETITIONER

VS.

JESSE BROWN,
SECRETARY OF VETERANS AFFAIRS, RESPONDENT

PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

Petitioner, Curtis J. McNaron respectfully prays that a writ of certiorari issue to review the judgement and opinion of the United States Court of Appeals for the Federal Circuit dismissing appeal for lack of jurisdiction.

OPINIONS BELOW

The unpublished written opinion of the United States Court of Appeals for the Federal Circuit appears in Appendix A(1) to the Petition. The unpublished recommended ruling of the Respondent - Appellee, adopted by the Federal Circuit Court, appears in Appendix B(2).

JURISDICTION

The Federal Circuit Court's Opinion in this matter was filed on January 10, 1994. Section 7292(d)(2) of Title 38 of the U.S. Code(3) denies the Federal Circuit Court jurisdiction over issues raised by Petitioner. Petitioner filed September 7, 1993 Notice of Appeal(4) from August 10, 1993 Veterans Appeals Court Opinion(5) to the Federal

(1) App. A, p. 11-14

(2) App. B, p. 15-75

(3) App. E, p. 78

(4) App. B, p. 64-74

(5) App. B, p. 60-63

Circuit Court, Section 7266(a) of Title 38 of the U.S. Code(6) denies the Veterans Appeals Court jurisdiction over issues raised by Petitioner. Petitioner filed May 20, 1993 Notice of Appeal(7) from August 24, 1992 Board of Veterans Appeals Decision(8) to the Veterans Appeals Court. This Court's jurisdiction is invoked by Authority of the United States Constitution Amendment V - the due process clause(9).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Due Process Clause of the Fifth Amendment to the United States Constitution is set forth in Appendix C.

Section 7292(d)(2) of Title 38 of the U.S. Code is set forth in Appendix D.

Section 7266(a) of Title 38 of the U.S. Code is set forth in Appendix E.

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(6) App. D, p. 77

(7) App. G, p. 85-105

(8) App. B, p. 30-45/App. B, p. 46-48

(9) App. C, p. 76

STATEMENT OF THE CASE

Petitioner filed May 20, 1993 Notice of Appeal from August 24, 1992 Board of Veterans Appeals ("BVA") Decision to the Veterans Appeals Court ("CVA"). Petitioner's Pro Se, Informal Notice of Appeal, dated May 7, 1993, alleged wrongful acts by Veterans Administration ("VA") doctors and doctors associated with the VA resulting in the Rating Board and the BVA not basing their Findings of Fact on correct information. On June 28, 1993, the CVA ordered Petitioner to show cause why this appeal should not be dismissed for lack of jurisdiction(10). Petitioner's Informal Petition for Extraordinary Relief in response to CVA's dismissal of appeal due to filing date was Filed July 7, 1993(11). Petitioner's Petition for Extraordinary Relief, dated June 30, 1993, alleged period of instability caused by misdiagnosed back

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(10) App. B, p. 49-50

(11) App. B, p. 51-53

condition resulting in Petitioner not receiving BVA's decision in time for Petitioner to make a timely Notice of Appeal. Petitioner further stated he did not receive the BVA's decision until April 1993(12). On July 14, 1993, the CVA stated that the Petitioner failed to establish jurisdiction of CVA and ordered Petitioner's appeal dismissed for lack of jurisdiction.(13) Petitioner's Motion for Review of Order to Dismiss for lack of jurisdiction, filed July 23, 1993(14) argued to the CVA it's responsibility to address the issues Petitioner raised, and the responsibility of the VA for Petitioner's untimely Notice of Appeal. CVA, filed August 10, 1993, ordered

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(12) App. B, p. 51, "I did not...until April, 1993."/App. F, p. 81, "Under penalty of...accept as fact."

(13) App. B, p. 54-56

(14) App. B, p. 57-59

Petitioner's motion for review denied.(15)

Petitioner filed September 7, 1993 Notice of Appeal from August 10, 1993 CVA's Judgement as final(16) to the Federal Circuit Court. Petitioner's Pro Se, Informal Notice of Appeal, dated August 27, 1993, alleged Findings of Fact by VA and CVA as plausibly disputable, unjustifiable discrimination and protected unfairness. Respondent's Motions To Waive The Requirements Of Federal Circuit Rule 27(e) And To Dismiss For Lack Of Jurisdiction, filed October 19, 1993, stated CVA had no jurisdiction to consider Petitioner's appeal due to section 7266(a) of Title 38 of the U.S. Code, and that the Federal Circuit Court had no jurisdiction to review CVA's Judgement due to Section 7292(d)(2) of Title 38 of the U.S. Code. The Federal Circuit Court ordered, January 10, 1994: (1) The Secretary's Motion to waive the requirements of Federal Circuit

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(15) App. B, p. 60-61

(16) App. B, p. 62-63

Rule 27(e) is granted; (2) The Secretary's motion to dismiss is granted; (3) Each side shall bear its own costs.

REASONS FOR GRANTING THE WRIT

In matters affecting a citizen's Liberty and Due Process of Law, the United States Constitution is inviolable(17). To safeguard a citizen's right to Liberty and Due Process of Law, the authority of the executive, legislative and judicial branches of government is given limitation, rather than limitation being placed on a citizen's right(18). When a procedural rule asserts denial of a citizen's substantive right, then consideration of the facts of the matter is to

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(17) App. B, p. 22,"unless an appeal presents a constitutional issue"

(18) App. B, p. 16,"Because Mr. McNaron, who appears here pro se, has already filed his informal brief in this case, Federal Circuit Rule 27(e) would preclude us from filing a motion to dismiss at this time."

be tested by the particular circumstances, precise function of government and nature of citizen's right affected(19). Failing this, government must be found in violation of the U.S. Constitution(20). Such is the case Petitioner implores the United States Court of Appeals for the Federal Circuit to consider by granting a Writ of Certiorari.

Procedural rules, sections 7266(a) and 7292(d)(2) of Title 38 of the U.S. Code, have denied Petitioner's substantive right to Due Process of Law.

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(19) App. C, p. 76

(20) App. B, p. 25,"Furthermore, the determination of whether Rule 4 bars Mr. McNaron's appeal is properly left to the CVA."/App. A, p.13,"This court can review only challenges to the validity of a statute or regulation or the interpretation of a constitutional or statutory provision that the Court of Veterans Appeals relied on in its decision."

Section 7266(a) of Title 38 of the U.S. Code requires a timely Notice of Appeal to be filed within 120 days after the date on which notice of the decision is mailed to Petitioner and Petitioner's authorized representative at their last known addresses. This, the Respondent swears, was done. Thus, the petitioner's sworn testimony to the contrary was given no credence(21).

Section 7292(d)(2) of Title 38 of the U.S. Code denies the Federal Circuit Court appellate review of factual determinations or the application of a law to the facts concerning cases appealed from CVA, and only cases appealed from CVA due to the presumption of such cases have already been subject to review by an appellate court(22). But, CVA denied review August 10, 1993 due to the

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(21) App. F, p. 80-83/App. B, p. 66-74

(22) App. A, p. 13,"we review cases that have already been subject to review by an appellate court."

presumption, collaborated by the sworn testimony of Respondent, that Petitioner violated Section 7266(a) of Title 38 of the U.S. Code(23). Such irrebuttable presumptions by procedural rules violate a citizen's substantive right to Due Process of Law(24). Furthermore, the purposeful exclusion from appellate review by the Federal Circuit Court of cases appealed from CVA due to an irrebuttable presumption is invidious discrimination.

Finally, Sections 7266(a) and 7292(d)(2) of Title 38 of the U.S. Code as presently construed fail to regulated procedure for a citizen's substantive right to Due Process of Law. No rational, justification based on irrebuttable presumptions can abridge a citizen's Constitutional right. Yet,

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(23) App. B, p. 60-63

(24) App. B, p. 49,"It appears that the Board of Veterans' Appeals (BVA) decision being appealed was mailed on August 24, 1992."

Respondent's sworn testimony, though plausibly disputable(25), was rationally construed by court procedure as irrebuttable, denying Petitioner access to courts, negating redress of grievances of an unjustifiable discrimination(26), establishing circumstances violative of a meaningful time for notice of appeal, resulting in protected unfairness(27).

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(25) App. B, p. 67-71,"The decision by...the Veterans Administration;"

(26) App. G, p. 85-105

(27) App. B, p. 20,"More recently, the Supreme Court noted that courts may not in any case, even in the interest of justice, extend their jurisdiction where not exists."

CONCLUSION

For the reasons set forth above, a writ of certiorari should issue to review the judgement and opinion of the Court of Appeals in this matter.

DATED: March 30, 1954

Respectfully submitted

Curtis J. McNaron
Pro Se

APPENDIX

NOTE: Pursuant to Fed. Cir. R. 47.6, this order is not citable as precedent. It is a public record.

United States Court of Appeals

for the Federal Circuit

92-7121

CURTIS J. MCNARON,
Claimant-Appellant,

v.

JESSE BROWN, Secretary of Veterans Affairs,
Respondent-Appellee.

ON MOTION

Before NEWMAN, Circuit Judge, BENNETT, Senior Circuit Judge, and ARCHER, Circuit Judge.

NEWMAN, Circuit Judge.

O R D E R

The Secretary of Veterans Affairs moves to waive the requirements of Fed. Cir. R. 27 (e) and to dismiss Curtis J. McNaron's appeal for lack of jurisdiction. McNaron has not filed a response.

McNaron seeks review of the July 14, 1993

order of the Court of Veterans Appeals dismissing his appeal for failure to file a timely notice of appeal. McNaron asserts that because of his lack of a permanent mailing address, he did not receive the Board of Veterans Appeals decision until after the 120-day statutory deadline had passed.

McNaron challenges the application of a law (38 U.S.C.A. 7266(a)) to his claim. McNaron does not contest the validity of a statute or a regulation, or the interpretation of a constitutional or statutory provision for a regulation. Thus, no issue is raised which falls within the jurisdiction of this court under 38 U.S.C. 7292(c), (d)(1)-(2).

Most appeals to the Federal Circuit from sources other than the Court of Veterans Appeals involve reviewing decisions from trial courts or agency boards that function like trial courts. In such appeals, Congress has given this court broad power to review many

types of issues, including questions of fact of the application of the law to the facts of the case.

In appeals from the Court of Veterans Appeals, unlike appeals from a trial court or administrative agency, we review cases that have already been subject to review by an appellate court. Because of this previous appellate review, Congress, in these cases, denied this court the usual broad scope of review and limited this court's review to certain rulemaking, statutory, and constitutional issues. In particular, section 7292(d) of Title 38 of the U.S. Code states that this court "may not review (A) a challenge to a factual determination, or (B) a challenge to a law or regulation as applied to the facts of a particular case."

This court can review only challenges to the validity of a statute or regulation or the interpretation of a constitutional or

statutory provision that the Court of Veterans Appeals relied on in its decision. If an appeal to this court from the Court of Veterans Appeals does not challenge the validity of a statute or regulation or the interpretation of a constitutional or statutory provision relied on by the Court of Veterans Appeals, this court is required by 7292(d) to dismiss the appeal. See Livingston v. Derwinski, 959 F.2d 224, 225-26 (Fed. Cir. 1992).

Accordingly,

IT IS ORDERED THAT:

(1) The Secretary's motion to waive the requirements of Fed. Cir. R. 27(e) is granted.

(2) The Secretary's motion to dismiss is granted.

(3) Each side shall bear its own costs.

FOR THE COURT

JAN 10 1994 — PAULINE NEWMAN

DATE — Circuit Judge

cc: Jeffrey R. Davis, Esq.

Curtis J. McNaron

s6

ISSUED AS A MANDATE: JAN 10 1994

IN THE UNITED STATES COURT OF APPEALS

FOR THE FEDERAL CIRCUIT

CURTIS J. McNARON, Claimant-Appellant,	))
v.	)No. 93-7121
JESSE BROWN, Secretary of Veterans Affairs, Respondent-Appellee	)))

RESPONDENT-APPELLEE'S MOTIONS

TO WAIVE THE REQUIREMENTS OF FEDERAL CIRCUIT

RULE 27(e) AND TO DISMISS FOR LACK OF

JURISDICTION

Respondent-Appellee respectfully requires that the Court waive the requirements of Federal Circuit Rule 27(e) and dismiss Mr. McNaron's appeal for lack of jurisdiction. Mr. McNaron appeals an order of the Court of Veterans Appeals ("CVA") which dismissed Mr. McNaron's appeal for lack of jurisdiction because he failed to file a notice of appeal within the 120 day period as required by statute. See 28 U.S.C. 7266(a).

This Court should dismiss the appeal

because Mr. McNaron's appeal challenges only factual determinations or application of the law to the facts. Determinations of questions of fact, do not come within this Court's extremely narrow jurisdiction to entertain appeals from the CVA.

Because Mr. McNaron, who appears here pro se, has already filed his informal brief in this case, Federal Circuit Rule 27(e) would preclude us from filing a motion to dismiss at this time. However, in similar circumstances, this Court has waived the requirements of Rule 27(e)-1- and has permitted the Government to file a motion to dismiss. E.g., Pena v. Secretary, Department of Veterans Affairs, 944 F.2d. 867, 868 (Fed. Cir. 1991).

Accordingly, we request that our motions be granted, and that Mr. McNaron's appeal be dismissed. In support of our motions, we rely upon the following memorandum of facts and law, appendix, and Mr. McNaron's informal brief.

MEMORANDUM OF FACTS AND LAW

Nature of the Case

Appellant, Curtis J. McNaron, seeks review of a decision of the CVA in Curtis J. McNaron v. Jesse Brown, Secretary of Veterans Affairs, Vet. App. No. 93-474 (July 14, 1993). App. 14-15.-2- The CVA dismissed for lack of jurisdiction Mr. McNaron's appeal filed May 20, 1993, from an August 24, 1993 decision of the Board of Veterans' Appeals ("BVA"). App. 2-7. The CVA ruled that the appeal was untimely because the notice of appeal was filed beyond the 120-day period provided under 28 U.S.C. 7266(a) (West 1991). In his informal brief, Mr. McNaron alleges that he was not at fault in failing to file his appeal with the CVA in a timely manner. McNaron Br. at p.1. He states that he did not receive the

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1 Note: Prior to the revision of this Court's rules on June 1, 1993, Rule 27(e) was designated as Rule 27(d).

2 "App._____" refers to the appendix to this motion.

Board's decision until May 12, 1993, and therefore, he could not file his notice of appeal until after that date.

Statement of The Facts and Course of Proceedings Below

On August 24, 1992, the BVA rendered a decision which increased from twenty to forty percent the disability rating for Mr. McNaron's service-connected low-back strain, postoperative fusion of L3/L4, with degenerative changes of L3/L5. App. 6-7. Mr. McNaron filed a notice of appeal of that decision with the CVA on May 20, 1993. App. 9. In response to an order to show cause issued by the CVA, App. 11, Mr. McNaron explained that if the Department of Veterans Affairs had not misdiagnosed his condition, causing him to become homeless, he would have received the BVA's decision in time to file a timely notice of appeal. App. 11-12.

By order dated July 14, 1993, the CVA

dismissed the appeal for lack of jurisdiction. App. 14-15. On July 23, 1993, order, alleging that since the CVA is the only court to which he could appeal a BVA decision, the CVA had jurisdiction over his case. App. 16-17. On August 10, 1993, the CVA denied Mr. McNaron's motion for review. App. 18. Judgment was entered on August 10, 1993. App. 19. On September 7, 1993, Mr. McNaron filed a document which was construed as a notice of appeal to the Court. App. 20.

ARGUMENT

I. This Court Lacks Jurisdiction To Entertain The Issues Raised By Mr. McNaron

In his informal brief, Mr. McNaron argues that the BVA erred in its application of Rule 4 requiring a claimant to file a notice of appeal within 120 days after a decision of the BVA is mailed to an appellant. Additionally, Mr. McNaron asks that this Court set aside the decision of the CVA and determine whether he

was treated fairly. McNaron Br. at p.2. These factual issues, and application of the law to these factual issues, are precisely the type of claims that do not fall within this Court's narrow statutory jurisdiction regarding appeals from the CVA.

Federal courts of appeal are courts of limited jurisdiction. E.g., Livingston v. Derwinski, 959 F.2d 224, 225 (Fed. Cir 1992). It is well-established that, for any Federal court inferior to the United States Supreme Court to exercise jurisdiction, that jurisdiction must have been supplied by an act of Congress. Finley v. United States, 490 U.S. 545, 548 (1989) (citing The Mayor v. Cooper, 73 U.S. (6 Wall) 247, 252 (1868)). The Supreme Court has stated that "courts which are created by written law, and whose jurisdiction is defined by written law, cannot transcend that jurisdiction." Ex parte Bollman, 8 U.S. (4 CRANCH) 75, 93 (1807),

quoted in Finley, 490 U.S. at 547. More recently, the Supreme Court noted that courts may not in any case, even in the interest of justice, extend their jurisdiction where not exists. Christianson v. Colt Indus. Operating Corp., 486 U.S. 800, 818 (1988).

The Veterans' Judicial Review Act ("VJRA"), Pub. L. No. 100-697, Div. A, 102 Stat. 4105 (1988), established this Court's jurisdiction to entertain appeals from CVA decision. Pursuant to the VJRA, this Court lacks jurisdiction to review the CVA's factual determinations or its application of the law to the facts of a particular case. See, U.S.C. 7292 (formerly 4092). The statute provides, in pertinent part:

> (a) After a decision of the United States Court of Veterans Appeals is entered in a case, any party to the case may obtain a review of the decision with respect to the validity of any statute or regulation (other that a refusal to review the schedule of rating for disabilities adopted under section 1155 of this title) or any interpretation thereof (other than a determination as to

> a factual matter) that was relied on by the Court in making the decision...

38 U.S.C. 7292(a); see Strott v. Derwinski, 964 F. 2d 1124, 1126 (Fed. Cir. 1992); Livingston, 959 F.2d at 225. The statute thus specifically limits this Court's review to statutory or regulatory questions, and specifically bars this Court from reviewing any "factual matters" upon appeal.

Subsection (d) of section 7292 makes this limitation even more clear. By the terms of the statute, unless an appeal presents a constitutional issue --and this one does not-- this Court "may not review (A) a challenge to a factual determination, or (B) a challenge to a law or regulation as applied to the facts of a particular case." 38 U.S.C. 7292 (d)(2).

This Court has consistently applied section 7292 strictly to bar appeals of the type presented here. See, e.g., Johnson v. Derwinski, 949 F.2d at 395 (Federal Circuit

jurisdiction not established where appeal challenged only factual determinations); Prenzler v. Derwinski, 928 F.2d 392, 393 (Fed. Cir. 1991) (Federal Circuit may not review challenges to factual findings or a challenge to a law or regulation as applied to the facts of a particular case); Machado v. Derwinski, 928 F.2d 389, 391 (Fed. Cir. 1991) (Federal Circuit authorized to review nonfactual decisions of the CVA).

Consequently, where an appeal from a CVA decision presents this Court with only factual issues or issues of the application of the law to the facts of a particular case, and the Court's jurisdictional statute bars review of factual issues, the appeal must be dismissed for lack of jurisdiction because those issues are beyond this Court's narrowly drawn appellate jurisdiction in CVA cases.

Pursuant to those principles, this Court lacks jurisdiction to review the

determinations challenged by Mr. McNaron in his informal brief. It is clear from Mr. McNaron's informal brief that the gravamen of this appeal is his disagreement with the CVA's factual determinations regarding whether the CVA acted properly in applying Rule 4. Mr. McNaron claims that because he "was out of control of [his] life circumstances", he was unable to file a timely notice of appeal. McNaron Br. at p.2. Specifically, he claims that he did not receive the BVA decision until May 12, 1993. McNaron Br. at p.1. In response to the show cause order issued by the CVA, however, he claimed he received the BVA decision in April 1993. App. 12.

Upon consideration of Mr. McNaron's claims "that he traveled around seeking employment and he did not receive the BVA decision until April 1993", the CVA determined that Mr. McNaron's failed to carry his burden to establish the Court's jurisdiction. Id.

Accordingly, the CVA determined that Mr. McNaron's appeal should be dismissed.

This Court is statutorily barred from reconsidering the application of these facts, and application of these facts to Rule 4. 38 U.S.C 7292. Mr. McNaron, in his informal brief, asserts that the application of Rule 4 is prejudicial and discriminatory. McNaron Br. at p.2. Presumably, Mr. McNaron makes this assertion because Rule 4 was applied to bar his appeal. Mr. McNaron has offered this Court no new reason, or valid excuse, for his untimeliness. Furthermore, the determination of whether Rule 4 bars Mr. McNaron's appeal is properly left to the CVA.

This decision does not raise a constitutional issue or an issue with respect to the validity of any statute or regulation or the interpretation thereof; it does not, therefore, fall within this Court's limited

jurisdiction, as set for the 38 U.S.C. 7292. In Livingston, this Court stated, "[i]n the absence of a challenge to the validity of a statute or a regulation, or the interpretation of a constitutional or statutory provision or regulation, [this Court] ha(s) no authority to consider the appeal." 959 F.2d at 226.

Because this appeal is a challenge to a factual determination, or the application of Rule 4 to the facts of Mr. McNaron's case, this Court is barred by statue from reviewing this appeal. 38 U.S.C. 7292(d). Accordingly, this appeal should be dismissed for lack of jurisdiction.

CONCLUSION

For the foregoing reasons, we respectfully request this Court waive the requirements of Federal Circuit Rule 27(e) and

dismiss this appeal.[3]

Respectfully submitted,

FRANK W. HUNGER
Assistant Attorney General

DAVID M. COHEN
Director

BRYAN G. SNEE
Assistant Director

JEFFREY R. DAVIS
Trial Attorney
Commercial Litigation Branch
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Department of Justice
Attn: Classification Unit
2nd Floor, Todd Bldg.
Washington, D.C. 20530
Tele: (202) 307-1011

October 18, 1993 Attorneys for Respondent

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3 Should the Court deny our motion to dismiss, we respectfully request that we be permitted twenty-one days from the date of the Court's denial to file a brief upon the merits.

APPENDIX

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Board of Veteran's Appeals

Department of Veterans Affairs

Washington, D.C. 20420

BOARD OF VETERANS' APPEALS NOTICE

Enclosed is a copy of the decision reached by the Board of Veterans' Appeals (BVA) in your appeal. This is a final decision by the BVA and is based upon all the evidence of record and the applicable laws and regulations.

If the decision is not favorable to you, you may reopen your claim by submitting new and material evidence to the Department of Veterans Affairs (VA) office where your claim originated. VA may not consider another claim on the same factual basis.

You may have an attorney, agent or other competent person represent you in your claim before VA and on appeal before the BVA. You may also be represented by an accredited representative of a recognized service

organization. By law, an attorney or agent may not charge you a fee for representing you, except in specific circumstances, and a service organization representative or person other than an attorney or agent may not charge a fee at any level of VA or BVA claim adjudication.

An attorney or agent may charge you a fee for services rendered on or after September 1, 1989, under the following circumstances: (1) your claim was denied by a local VA office; (2) you filed a Notice of Disagreement with the local VA office on or after November 18, 1988; (3) a final BVA decision has been issued; and (4) the attorney or agent is retained to represent you within 1 year from the date of the final BVA decision. Any reasonable fee agreement is permitted; however, if you enter into an agreement with your attorney or agent based on a contingency fee payable by VA directly to the attorney or

agent out of past-due benefits, the fee is limited to 20 percent of any past-due benefits awarded on the basis of the claim. If you retain an attorney or agent, a copy of the fee agreement must be filed with the BVA within 30 days of its execution. The fee agreement should be filed with the Office of the Chairman, Special Legal Assistant (01C), Board of Veterans' Appeals, 810 Vermont Ave, N.W., Washington, D.C. 20420. You may request BVA review of the reasonableness of fees and expenses charged by an attorney or agent. (See 38 C. F. R. 20.609 and 20.610 (proposed)).

You may have the right to appeal this BVA decision to a court. A final decision of the BVA, which follows a Notice of Disagreement filed on or after November 18, 1988, may be appealed to the United States Court of Veterans Appeals (CVA). A notice of appeal must be filed with the CVA within 120 days

from the date of mailing of notice of the BVA decision. The date of mailing is the date which appears on the face of the decision. The CVA's address is: The United States Court of Veterans Appeals, 625 Indiana Ave, N.W., Suite 900, Washington, D.C. 20004. Information concerning the form of the notice of appeal and the amount of any filing fee required by the CVA should be obtained from the CVA. A copy of the notice of appeal should also be mailed to the VA General Counsel (027), 810 Vermont Avenue, N.W., Washington, D.C. 20420. (While a copy of your notice of appeal to the CVA should be filed with the VA General Counsel, the CVA is not a part of VA and filing a copy of your notice of appeal with the General Counsel, the BVA, or any other VA office will not protect your right of appeal). In appealing a BVA decision to the CVA, an appellant may be represented by an

attorney at law or other person admitted to practice before the CVA in accordance with its rules of practice.

IN THE APPEAL OF
CURTIS J. McNARON C 29 760 556

BOARD OF VETERANS' APPEALS

WASHINGTON, D.C. 20420

DOCKET NO. 92-00 966) DATE AUG 24 1992
)
)
)

THE ISSUE

Entitlement to an increased rating for low back strain, postoperative fusion of L3/L4, with degenerative changes of L3/L5, currently evaluated as 20 percent disabling.

REPRESENTATION

Appellant represented by: Disabled American Veterans

ATTORNEY FOR THE BOARD

J.A. McDonald, Associate Counsel

IN THE APPEAL OF
CURTIS J. McNARON C 29 760 556

INTRODUCTION

The veteran served on active duty from March 1968 to November 1971, and from October 1980 to October 1983. This case came before the Board of Veterans' Appeals (hereinafter the "Board") from decisions of the Roanoke, Virginia and St. Petersburg, Florida regional offices (hereinafter the "RO"). A rating decision in June 1991, denied the veteran's claim of entitlement to an increased evaluation for his service-connected back disorder. The notice of disagreement to this action was received in September 1991, and a statement of the case was issued in November 1991. The veteran's substantive appeal was received in December 1991. The issue developed and certified for appeal is entitlement to an increased rating for low back strain, postoperative fusion of the L3/L4

level, with degenerative changes at the L3/L5 level.

However, the veteran, in his notice of disagreement, stated that he was unable to find employment due to his back disorder. Although this issue was not addressed by the RO, the United States Court of Veterans Appeals (hereinafter the "Court") has held that all issues which are reasonably raised from a liberal reading of documents submitted on appeal are to be addressed by the Board. EF v.Derwinski, 1 Vet. App. 324 (1991). As the issue of a total rating for compensation purposes based on individual unemployability has not been developed for current appellate review, it is referred to the RO for appropriate consideration.

The appeal was received at the Board in February 1992, and docketed in March 1992. The veteran's representative, Disabled

American Veterans, submitted additional written argument in April 1992, and the case is now ready for appellate review.

CONTENTIONS OF APPELLANT ON APPEAL

The veteran asserts that the RO erred in denying an increased rating for his back disorder as he contends that this disorder is more severe than currently evaluated, because he experiences pain in the lower back, which radiates to the left hip and down his left leg, resulting in decreased mobility.

DECISION OF THE BOARD

Following review and consideration of all the evidence and material of record in the veteran's claims file in accordance with the provisions of 38 U.S.C. 7104 (1992), and for the reasons and bases hereinafter set forth, it is the decision of the Board that the

preponderance of the evidence supports the claim of entitlement to an increased rating for low back strain, postoperative fusion of the L3/L4 level with degenerative changes of the L3/L5 level.

FINDING OF FACT

1. All relevant evidence necessary for an equitable disposition of the veteran's appeal has been obtained by the RO.

2. The veteran's chronic low back pain with degenerative changes is manifested by severe limitation on flexion and hyperextension, as well as loss of lateral motion. Narrowing of the intervertebral disc space at the L3/L4 and L4/L5 levels is present.

CONCLUSION OF LAW

The criteria for a 40 percent disability evaluation for low back strain, postoperative

fusion of the L3/L4 level with degenerative changes of the L3/L5 level, have been met. 38 U.S.C. 1155, 5107 (1992); 38 C.F.R. 4.7, 4.71(a), Diagnostic Code 5292(1991).

REASONS AND BASES FOR FINDINGS AND CONCLUSION

We initially note that the veteran's claim is well grounded within the meaning of 38 U.S.C. 5107(a). That is, we find that he has presented a claim which is plausible. Murphy v. Derwinski, 1 Vet.App. 78, 81 (1990). We are also satisfied that all relevant facts have been properly developed by the Department of Veterans Affairs (hereinafter the "VA") and that no further assistance to the veteran is required to comply with the duty to assist as mandated by 38 U.S.C. 5107(a).

Some of the basic facts are not in dispute. Service connection is in effect for a low back strain, postoperative fusion of the L3/L4

level, with degenerative changes of the L3/L5 level. The RO has assigned a 20 percent evaluation for this disorder under the provisions of Diagnostic Codes 5293-5010 of the VA's Schedule for Rating Disabilities. 38 C.F.R. Part 4 (1991). In general, disability evaluations are intended to compensate for the average impairment of earning capacity resulting from a service-connected disability. The veteran's service medical records reveal the veteran complained of tenderness at the L4 and L5 levels in 1968 as a result of an automobile accident. He was treated with muscle relaxants, low back pain exercises, and heat without much improvement. In August 1981, the veteran reported he was being treated for a slipped disc and complained of low back pain. In June 1982, spina bifida was noted and in January 1983, he underwent spinal fusion of the L3/L4 level. At a VA

examination in November 1983, the veteran complained of pain, stiffness, and tenderness. No muscle spasms on motion were found. The veteran's range of motion of his lower back was essentially within normal limits. Medical reports in 1984 showed the veteran complained of low back pain. In order to alleviate the pain, the metal plates which had been placed in his low back were removed in January 1985. In June 1985, a VA examination noted tenderness over the lumbar scar and donor site scar on the left iliac crest. Motor, sensory, and reflex testing were normal, as was straight leg raising. A neurological examination found no neurological deficits, although there was mild hyperreflexia in the right leg.

Magnetic resonance imaging in June 1990 revealed a marked loss of disc space at the L3/L4 level. The L4/L5 disc space showed

degenerative disc disease, loss of disc height, and signal changes consistent with discogenic sclerosis. A ventral extradural defect at the disc level consistent with spur and/or disc bulging was noted. A VA orthopedic examination in June 1991 revealed the veteran's spinal motion was severely limited for flexion, with two-thirds loss of flexion on standing, and 100 percent loss of hyperextension. The loss of side bending was noted as 50 percent. The Lasegue's tests were normal and double straight leg raising was noted as satisfactory. Knee and ankle jerks were active bilaterally. X-ray studies showed spinal bone graft fusion of the L3 and L4 vertebra. The L4/L5 disc spaces showed sclerosis and minimal incipient osteophytosis. A 40 percent evaluation requires severe limitation of motion of the lumbar spine. 38 C.F.R. 4.71(a), Diagnostic Code 5292. The

clinical evidence reveals the veteran's service-connected low back disorder is manifested by objective symptomatology, including severe limitation on forward bending and extension, as well as significant limitation of lateral bending. Narrowing of the intervertebral disc space was demonstrated at the L3/L4 level. We therefore find that the actual manifestations of the veteran's service-connected low back disorder warrant a 40 percent evaluation. 38 C.F.R. 4.7, 4.71(a), Diagnostic Code 5292. As there is no showing of sciatic neuropathy with absence of ankle jerks and muscle spasm, or other neurological findings, a 60 percent evaluation for the veteran's service-connected disorder have not been met. 38 C.F.R. 4.71(a), Diagnostic Code 5293 (1991).

ORDER

A 40 percent evaluation for low back strain,

postoperative fusion of the L3/L4 level with degenerative changes of the L3/L5 level is granted subject to the controlling regulations applicable to the payment of monetary benefits.

BOARD OF VETERANS' APPEALS
WASHINGTON, D.C. 20420

*

M. SABULSKY

J.U. JOHNSON

*38 U.S.C. 7102(a)(2)(A) (1992) permits a Board of Veterans' Appeals Section, upon direction of the Chairman of the Board, to proceed with the transaction of business without awaiting assignment of an additional Member to the Section when the Section is composed of fewer than three Members due to absence of a Member, vacancy on the Board or inability of the Member assigned to the Section to serve on the panel. The Chairman has directed that the Section proceed with the

transaction of business, including the issuance of decisions, without awaiting the assignment of a third Member. NOTICE OF APPELLATE RIGHTS: Under 38 U.S.C. 7266 (1992), a decision of the Board of Veterans' Appeals granting less than the complete benefit, or benefits, sought on appeal is appealable to the United States Court of Veterans Appeals within 120 days from the date of mailing of notice of the decision, provided that a Notice of Disagreement concerning an issue which was before the Board was filed with the agency of original jurisdiction on or after November 18, 1988. Veterans' Judicial Review Act, Pub. L. No. 100-687, 402 (1988). The date which appears on the face of this decision constitutes the date of mailing and the copy of this decision which you have received is your notice of the action taken on your appeal by the Board of Veterans' Appeals.

UNITED STATES COURT OF VETERANS APPEALS

Notice of Appeal

Curtis J. McNaron, Appellant	)
v.	) VA File No.
EDWARD J. DERWINSKI, Secretary of Veterans Affairs, Appellee.	) C 29-670 556

Notice is hereby given that Curtis Jerome McNaron, Appellant, appeals to the U.S. Court of Veterans Appeals from the decision of the Board of Veterans' Appeals (BVA).

Information pertaining to BVA decision being appealed:

a. Date of filing of Notice of Disagreement which led to BVA decision being appealed: June 1991

b. Location of VA Regional Office or other VA activity where Notice of Disagreement was filed: Roanoke, Virginia and St. Petersburg, Florida

c. Date BVA decision was mailed: August 1992 *

APPENDIX B, Page 34 of 65

NOTICE OF APPEAL FILED BY:

[ ]Appellant's attorney

[ ]Appellant's representative

[x]Appellant

_____
Signature of Appellant

Curtis J. McNaron
Printed Name

3407 Ritter St.
Address

Richmond, Virginia 23234
Address

804-230-4735
Telephone Number

*I received by U.S. Postal Service on May 7, 1993, the decision by the Board of Appeals, post marked May 5, 1993 and dated August 31, 1992.

CERTIFICATE OF SERVICE

On May 17, 1993, a copy of this Notice of Appeal was (check one)

[x] mailed postage prepaid to

[ ]served personally on

General Counsel (027)

Department of Veterans Affairs

810 Vermont Avenue, NW

Washington, D.C. 20420

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

May 17, 1993 — Date

CURTIS J. McNARON — Signature

****

UNITED STATES COURT OF VETERANS APPEALS

No. 93-474

CURTIS J. McNARON, Appellant,

v. VA File No 29 670 556

JESSE BROWN, Secretary
of Veterans Affairs, Appellee.

O R D E R

Appellant's Notice of Appeal (NOA) was received on May 20, 1993. It appears that the Board of Veterans' Appeals (BVA) decision being appealed was mailed on August 24, 1992. The Court does not have jurisdiction when an appellant fails to file a NOA with the Court within 120 days after the date when notice of the BVA decision was mailed. It is

ORDERED that appellant, within 20 days after the date of this order, show cause why this appeal should not be dismissed for lack of jurisdiction. It is further

ORDERED that proceedings on this appeal are stayed pending further order of the Court.

DATED: JUN 28 1993

FOR THE COURT:

ROBERT F. COMEAU

Clerk of the Court

By: Michael R. Smith

Deputy Clerk

Copies to:

Curtis J. McNaron

3407 Ritter Street

Richmond, VA 23234

General Counsel (027)

Department of Veterans Affairs

810 Vermont Avenue, NW

Washington, D.C. 20420

mrs

June 30, 1993

Curtis J. McNaron
3407 Ritter St.
Richmond, Va. 23234
PH# (804) 230-4735
SSN# 256-74-0555
VA File# C 29-670 556
Docket No. 93-474

Robert F. Comeau
Clerk of the Court
United States Court of Veterans Appeals
Suite 900
625 Indiana Avenue, N.W.
Washington, D.C. 20004

RE: Petition for Extraordinary Relief in Response to Court's Dismissal of Appeal due to Filing Date

Dear Sir,

I did not receive the Board's decision until April, 1993. As a result of Veteran's

Administration Doctors misdiagnosing my back condition, I lost my job, was homeless, was unable to obtain and/or secure gainful employment and was deeply in debt from living off my wife's credit card while traveling around seeking employment. My family and I have suffered greatly due to the uninformed decisions of the Rating Board and the Board of Appeals. When our credit was nearly exhausted, I feared legal action for none payment of debts, and I still may be prosecuted for none payment of personal debts. My family and I would have been lost as homeless street people had it not been for the Christian generosity of relatives. I contend that my family and I would not have suffered these things had the Veterans Administration Doctors correctly diagnosed my back condition. I further contend that I would have received the Board's decision on time to file a timely appeal had not my family and I suffered the

results of the Veterans Administration Doctors misdiagnosing my back condition. It is for this reason that I Petition for Extraordinary Relief in response to the United States Court of Appeals dismissal of my appeal due to the filing date.

Sincerely,

Curtis J. McNaron

cc: General Counsel (027)
Department of Veterans Affairs
810 Vermont Avenue, NW
Washington, D.C. 20420

Designated for electronic publication only

UNITED STATES COURT OF VETERANS APPEALS

No. 93-474

CURTIS J. MCNARON, APPELLANT,

v.

JESSE BROWN,

SECRETARY OF VETERANS AFFAIRS, APPELLEE.

Before FARLEY, Judge

O R D E R

Note: This single-judge action carries no precedential weight in other cases. See Bethea v.Derwinski, 2 Vet.App. 252, 254 (1992)

On May 20, 1993, appellant filed his Notice of Appeal (NOA) from a Board of Veterans' Appeals (BVA) decision dated August 24, 1992.

On June 28, 1993, the Court ordered appellant, within 20 days after the date of that order, to show cause why his appeal should not be dismissed for lack of

jurisdiction. On July 7, 1993, appellant filed a response to the Court's order contending that, if the Department of Veterans Affairs had not misdiagnosed his condition, causing him to be unemployed and homeless, he would have received the BVA decision within the period to file a timely NOA. Further, appellant states that during that time he traveled around seeking employment and he did not receive the BVA decision until April 1993.

The ultimate burden of establishing jurisdiction rests with appellant. McNutt v. G.M.A.C., 298 U.S. 178 (1936); Bethea v. Derwinski, 2 Vet.App. 252 (1992). To be timely filed under Rule 4 of this Court's Rules of Practice and Procedure and precedents construing 38 U.S.C.A. 7266(a) (West 1991), an NOA must be received by the Court within 120 days after the BVA decision is mailed to an appellant. See Butler v. Derwinski, 960 F.2d 139 (Fed. Cir. 1992). This Court's

jurisdiction derives exclusively from statutory grants of authority provided by Congress and may not be extended beyond that permitted by law. See Christianson v. Colt Industries Operating Corp., 486 U.S. 800, 818 (1988); Machado v. Derwinski, 928 F.2d 389 (Fed. Cir. 1991); Dudley v. Derwinski, 2 Vet.App. 602 (1992).

On consideration of the foregoing, it is ORDERED that this appeal is dismissed for lack of jurisdiction.

DATED: JUL 14 1993

BY THE COURT:

JOHN J. FARLEY, III

Judge

Copies to:

Mr. Curtis J. McNaron

3407 Ritter Street

Richmond, VA 23234

General Counsel (027)

Department of Veterans Affairs

810 Vermont Avenue, NW

Washington, D.C. 20420

khs

July 20, 1993

Curtis J. McNaron
3407 Ritter St.
Richmond, Va. 23234
PH# (804) 230-4735
SSN# 256-74-0555
VA File# C 29 670 556
Docket No. 93-474

Robert F. Comeau
Clerk of the Court
United States Court of Veterans Appeals
Suite 900
625 Indiana Avenue, N.W.
Washington, D.C. 20004

RE: Motion for Review of Order to Dismiss for lack of Jurisdiction due to filing date: Judge Farley, July 14, 1993

Dear Sirs,

Judge Farley's order to dismiss for lack of jurisdiction is based on administrative rule No. 4:

1. Administrative Rule No. 4 is self-serving to the court to the detriment of the veteran;

2. the court was not established for its own convenience rather its mandate is to serve injured veterans;

3. the Veterans Administration has been part and party to the injury of the veteran;

4. the credibility and integrity of the United States Court of Veterans Appeals will be brought to question in the United States Court of Appeals for the Federal Circuit if the court refuses to address the wrongful acts by the Veterans Administration;

5. misdiagnosis of service-connected injuries of Veterans can only be addressed by law through the process the Veteran has followed, thus the court clearly has jurisdiction;

6. the misdiagnosis of the Veteran's service-connected injury has caused the Veteran further injury to his ability to seek,

obtain and secure gainful employment which in turn caused a period of unemployment, homelessness, and indebtedness which the Veteran has been struggling to recover from with the aid of relatives;

7. due to this period of unstableness, the Veteran did not receive the Board's Decision (Dated August 31, 1992) until May 1993, causing the Veteran to be in violation of Administrative Rule No. 4.

Sincerely,

Curtis J. McNaron

cc: General Counsel (027)
Department of Veterans Affairs
810 Vermont Avenue, N.W.
Washington, D.C. 20420

Designated for electronic publication only

UNITED STATES COURT OF VETERANS APPEALS

No. 93-474

CURTIS J. MCNARON, Appellant,

v. VA File No.

JESSE BROWN, 29 670 556
Secretary of Veterans Affairs, Appellee.

Before NEBBEKER, Chief Judge, and FARLEY*

and STEINBERG, Judges.

O R D E R

On July 14, 1993, in a single-judge* order, this case was dismissed for lack of jurisdiction. On July 23, 1993, appellant filed a motion for review of the Court's July 14, 1993, order. Appellant contends that, because this Court provides the only legal process in which a veteran may appeal a Board of Veterans' Appeals (BVA) decision, the Court clearly has jurisdiction over this appeal. Further, appellant asserts that, if the Court refuses to review the BVA decision, he will appeal to the United States Court of Appeals

for the Federal Circuit.

On consideration of the foregoing, it is

ORDERED that appellant's motion for review is denied.

DATED: AUG 10 1993 PER CURIAM.

Copies to:

Mr. Curtis J. McNaron
3407 Ritter Street
Richmond, VA 23234

General Counsel (027)
Department of Veterans Affairs
810 Vermont Avenue, N.W.
Washington, D.C. 20420

khs

UNITED STATES COURT OF VETERANS APPEALS

No. 93-474

CURTIS J. MCNARON, APPELLANT,

v.

JESSE BROWN,
Secretary of Veterans Affairs, Appellee

JUDGMENT

The decision of the Court having been issued in this case, and a motion for reconsideration or review thereof pursuant to Rule 35 of the Court's Rules of Practice and Procedures having been acted upon,

Judgment in accordance with the Court's decision is hereby entered pursuant to Rule 36(a) this date.

DATED: August 10, 1993

FOR THE COURT
ROBERT F. COMEAU
Clerk of the Court
By: Alberta Williams
Deputy Clerk

Copies to:

Curtis J. McNaron

3407 Ritter Street

Richmond, VA 23234

General Counsel (027)

Department of Veterans Affairs

810 Vermont Avenue, NW

Washington, DC 20420

Form 3. Petition for Review of Order of an Agency, Board, Commission or Officer

United States Court of Appeals for the Fourth Circuit

Curtis J. McNaron, Petitioner)

v.)Petition for

United States Court of)Review

Veterans Appeals, Respondent)

Curtis J. McNaron, hereby petitions the court for review of the Order of U.S. Court of Veterans Appeals, Docket No. 93-474 entered on July 14, 1993.

pro se appellant

Attorney for Petitioner

Address: 3407 Ritter St

Richmond, VA 23234

Curtis J. McNaron, Petitioner)

v.)Petition for

United States Court of)Review

Veterans Appeals, Respondent)

Curtis J. McNaron, Petitions the court for the review of the Order of the U. S. Court of Veterans Appeals, Docket No. 93-474 dismissing my case entered on May 20, 1993.

Curtis J. McNaron
3407 Ritter St.
Richmond, VA 23234

F-3

August 27, 1993

Curtis J. McNaron
3407 Ritter St.
Richmond, Va. 23234
PH# (804) 230-4735
SSN# 256-74-0555
VA File #C 29 670 556

US Court Veterans
Appeals Docket NO:
93-474

United States Court of Appeals
For the Fourth Circuit
United States Courthouse Annex
1100 East Main Street, Room 501
Richmond, Virginia 23219

RE: Petition for Review of United States Court of Veterans Appeals decision to dismiss Veteran's appeal for lack of jurisdiction, Judge John J. Farley, III July 14, 1993, Docket No. 93-474

APPENDIX B, Page 55 of 65

Dear Sir,

The decision by the United States Court of Veterans Appeals to dismiss the Veteran's appeal for lack of jurisdiction is based on Rule 4 of the Rules of Practice And Procedure of the United States Court of Veterans Appeals:

1. Rule 4 states that to obtain review by the Court of a Board decision, a person adversely affected by that decision must file a Notice of Appeal within 120 days after the date on which notice of the decision was mailed by the Board to the last known address of the appellant and the appellant's authorized representative;

a. the Veteran received the Board of Veterans Appeals decision dated August 24, 1992 and post marked May 12, 1993, more that 259 days after the Board of Veterans Appeals decision and alleged post date;

b. on December 24, 1992, 120 days after the Board of Veterans Appeals decision dated August 24, 1992, and alleged post date, Mr. Donald E. Beichner, Assistant Chief of Medical Administration Service, Department of Veterans Affairs, Hunter Holmes McGuire Medical Center, Richmond, Virginia certified to my employer "that according to records maintained by the Department of Veterans Affairs, Mr. McNaron has a disability rating of 20 percent from the VA for a spinal disc condition which resulted from his service in the U. S. Army." which contradicts the Board of Veterans Appeals contention that their decision to increase the Veterans disability rating to 40 percent dated August 24, 1992 was posted on that date;

c. on February 23, 1993, 181 days after the Board of Veterans Appeals decision dated August 24, 1992, and alleged post

date, the Veteran was notified by the Veteran's authorized representative, Mr. Allan L. McCroskey, National Service Officer, Disabled American Veterans, National Service Office, Roanoke, Virginia that "This letter is to inform you of a recent action taken in your case by the U.S. Department of Veterans Affairs. As your representative, I was advised of the action taken in your case before the Department's Rating Board and conducted a review of its decision. The Rating Board convened to consider the issue of evaluation of your service connected low back strain. Following its study of the documented evidence and after deliberation, it was the Board's decision that an increased severity had been demonstrated, thereby authorizing an increase from 20% to 40% effective 6/11/91. You will receive official

confirmation of this action by VA letter in the near future." which contradicts the Board of Veterans Appeals contention that their decision to increase the Veteran's disability rating to 40 percent dated August 24, 1992 was posted on that date;

2. also received by the Veteran from the Commonwealth of Virginia, Department of Veteran's affairs, Richmond, Virginia, post marked May 12, 1993, together with the Board of Veterans' Appeals decision dated August 24, 1992, Form FL 1-13, referral No. 0141016 dated August 31, 1992 stating "The enclosed communication initiated by this Board was returned undelivered. Please remail when the correct address is ascertained, with any necessary explanation." indicating DVARD, Winston, Salem, NC;

a. on April 17, 1992, 128 days before the Board of Veterans Appeals decision

dated August 24, 1992, and alleged post date, Mr. James E. Porter, VRS Vocational Rehabilitation, McGuire VA Medical Center, Richmond, Virginia, sent the Veteran a copy of VA FORM AUG 1990 28-8861 Request for Medical Services-Chapter 31, which contradicts the Board of Veterans Appeals contention that the Veterans address was unknown to the Veterans Administration;

b. on October 9, 1992, 44 days after the Board of Veterans Appeals decision dated August 24, 1992, and alleged post date, Mr. R.L. Sowell, Adjudication Officer, Department of Veterans Affairs, Regional Office, Roanoke, Virginia, sent the Veteran a letter, Reference No. 314/211B, contradicting the Board of Veterans Appeals contention that the Veterans address was unknown to the Veterans Administration;

3. although the decision by the Board of Veterans Appeals dated August 24, 1992, and alleged post date, increased the Veterans disability rating from 20 percent to 40 percent, the Veteran filed a Notice of Appeal, received by the United States Court of Veterans Appeals on May 20, 1993, Docket No. 93-474;

a. in consideration of my claim, the Board of Veterans Appeals failed to address the misdiagnosis of the Veterans service-connected back condition by Veterans Administration doctors and doctors associated with the Veterans Administration;

b. in consideration of my claim, the Board of Veterans Appeals failed to address the Veteran's appeal for unemployability compensation, the Veteran's claim subsequent to the misdiagnosis of the Veteran's service-

connected disability;

4. the United States Court of Veterans Appeals dismissed the Veteran's appeal for lack of jurisdiction based on Rule 4 of the Court's Rules of Practice And Procedure, and by taking that course of action failed to give the Veteran the benefit of doubt, and gave benefit to the Veterans Administration;

a. the Veteran gave argument to the United States Court of Veterans Appeals that Rule 4 as applied to the Veteran is prejudicial and discriminatory since due to the misdiagnosis of the Veterans service-connected back condition by Veterans Administration doctors and doctors associated with the Veterans Administration, the Veteran became unemployed and homeless, surviving by the generosity of Veterans Organizations, relatives, the use of a credit card and temporary periods of employment;

b. the Veteran adversely affected by a decision of the Veterans Administration to the point of degradation and expected to abide by Rule 4 experienced hardships precluding compliance with Rule 4, especially since proof of the Veterans claim wasn't forthcoming until the report of the Veteran's subsequent operation on June 16, 1992 at the McGuire Veterans Hospital, Richmond, Virginia;

5. In conclusion, the Veteran petitions the United States Court of Appeals for the Fourth Circuit to set aside the decision by the United States Court of Veterans Appeals dismissing my appeal for lack of jurisdiction; Furthermore, the Veteran petitions the United States Court of Appeals for the Fourth Circuit to consider whether the United States Court of Veterans Appeals in consideration of the Veterans appeal and its subsequent decision has demonstrated questionable credibility and

integrity, breaking faith with the Veteran adversely affected by a decision by the Veterans Administration.

Sincerely,

Curtis J. McNaron

cc: Robert F. Comeau
Clerk of the Court
United States Court of Veterans Appeals
Suite 900
625 Indiana Avenue, N.W.
Washington, D.C. 20004-2901

General Counsel (027)
Department of Veterans Affairs
810 Vermont Avenue, N.W.
Washington, D.C. 20420

CERTIFICATE OF SERVICE

I certify under penalty of perjury that on this 19th day of October, 1993 I caused to be placed in the United States mail, (first class mail, postage prepaid) copies of "RESPONDENT-APPELLEE'S MOTIONS TO WAIVE THE REQUIREMENTS OF FEDERAL CIRCUIT RULE 27(e) AND TO DISMISS FOR LACK OF JURISDICTION" addressed as follows:

Mr. Curtis J. McNaron
3407 Ritter Street
Richmond, Virginia 23234

United States Court of Appeals for

the Federal Circuit

93-7121

Curtis J. McNaron, Secretary

Claimant - Appellant v.

Jesse Brown, Veterans Affairs,

Respondent-Appellee

AMENDMENT V TO THE UNITED STATES CONSTITUTION -

THE DUE PROCESS CLAUSE

-- nor be deprived of life, liberty, or property, without due process of law.

APPENDIX C

United States Court of Appeals

for the Federal Circuit

93-7121

Curtis J. McNaron, Claimant - Appellant v. Jesse Brown, Secretary Veterans Affairs, Respondent-Appellee

SECTION 7266(a) OF TITLE 38 OF THE U.S. CODE

In order to obtain review by the Court of Veterans Appeals of a final decision of the Board of Veterans' Appeals, a person adversely affected by that action must file a notice of appeal with the Court. Any such notice must be filed within 120 days after the dated on which notice of the decision is mailed pursuant to Section 7104(e) of this title. [Title 38 Section 7104(e) - After reaching a decision in a case, the Board shall promptly mail a copy of its written decision to the claimant and the claimant's authorized representative (if any) at the last known address of the claimant and the last known address of such representative (if any).]

APPENDIX D

United States Court of Appeals

for the Federal Circuit

93-7121

Curtis J. McNaron, Claimant - Appellant vs. Jesse Brown, Secretary Veterans Affairs, Respondent-Appellee

SECTION 7292(d)(2) OF TITLE 38 OF U.S. CODE

Except to the extent that an appeal under this chapter presents a constitutional issue, the Court of Appeals may not review (A) a challenge to a factual determination, or (B) a challenge to a law or regulation as applied to the facts of a particular case.

APPENDIX E

United States Court of Appeals

for the Federal Circuit

93-7121

Curtis J. McNaron, Claimant - Appellant vs. Jesse Brown, Secretary Veterans Affairs, Respondent-Appellee

Typed copy of Pro Se Informal Brief of Appellant

UNITED STATES COURT OF APPEALS

FOR THE FEDERAL CIRCUIT

Curtis J. McNaron v. United States Court of Veterans Appeals

92-7121

Informal Brief of Appellant

Read the Guide for Pro Se Petitioners and Appellants before completing this form. Attach a copy of the final decision or order of the trial or appeals court (District Court, Court of International Trade, Claims Court, or Court of Veterans Appeals). Answer the following questions as best you can. Your answers should refer to the decision or order you are appealing where possible. Use extra sheets if needed.

1. Has the appellant ever had another case in this court? Yes If so, state the name and number of each case.

Curtis J. McNaron v. United States Court of Veterans Appeals No. 93-474 received and

rejected September 2, 1993 by Clerk of the Court Francis X. Gindhart pursuant to Fed. R. Ap. P. 4(a)(1)

2. Did the trial court incorrectly decide or fail to take into account any facts? Yes If so, what facts? (Refer to paragraph 7 of the Guide.)

Under penalty of perjury the Veteran stated to the Veterans Appeals Court that the BVA decision dated August 24, 1992 was not received by the Veteran until May 12, 1993, misstated as April 1993, which the Veterans Appeals Court did not accept as fact.

3. Did the trail court apply the wrong law? Yes If so, what law should be applied?

The Veterans Appeals Court decided that the Veteran violated Rule 4 of the Court's Rules of Practice and Procedure, whereas the Court's decision, in effect, labeled the Veterans statement as perjury, and as such, demands a hearing on that charge.

4. Did the trial court fail to consider important grounds for relief? Yes If so, what grounds?

The Veteran suffered physical pain and mental stress due to the misdiagnosis of his back condition by VA doctors and doctors associated with the VA resulting in the Veteran's affairs being unstable and confusing.

5. Are there other reasons why the trail court's decision was wrong? Yes If so, what reasons?

Rule 4 as applied to the Veteran is prejudicial and discriminatory since due to my disability, I felt out of control of my life circumstances.

6. What action (relief) do you want the court to take in this case?

The Veteran appeals to the Federal Circuit Court to set aside the Veterans Appeals Court decisions, and to consider

whether the Veteran was treated fairly by the Veterans Appeals Court.

7. Do you want to argue before the court in person? No What are the reasons why argument will aid the court? (Refer to paragraph 15 of the Guide.)

September 21, 1993

DATE

Appellant's

Signature

(Notary not required)

Mail an original and three copies of the informal brief and attachments to:

Clerk
U.S. Court of Appeals
for the Federal Circuit
717 Madison Place, NW.,
Washington, DC 20439

Serve a copy of the informal brief and attachments by mail on the appellee's attorney using the name and address on the notice of appearance form that was serviced on you by

that attorney. Attach a copy of that notice of appearance form (noting thereon the date you served the appellee) to the original of your brief as your proof of service.

United States Court of Appeals

for the Federal Circuit

93-7121

Curtis J. McNaron, Claimant - Appellant vs. Jesse Brown, Secretary Veterans Affairs, Respondent-Appellee

Typed copy of Pro Se Informal Notice of Disagreement with case Docket No. 92-00966

May 7, 1993

Curtis J. McNaron
3407 Ritter St.
Richmond, Va. 23234
PH# (804) 230-4735
SSN# 256-74-0555
VA CLAIM# C29 670 556

The United States Court of Veterans Appeals
625 Indiana Avenue, N.W., Suite 900
Washington, D. C. 20004

RE: Notice of Disagreement with case Docket No. 92-00966

Dear Chairman,

I have this date (May 7, 1993) received by U. S. Postal Service the decision by the Board of Appeals, post marked May 5, 1993, and dated August 31, 1992. Before this date, I was notified by the DAV that a favorable decision had been reached by the Board concerning my appeal.

I now allege that the Board did not base

its decision upon all the evidence of record as indicated by Case Docket No. 92-00 966.

1. Case Docket No. 92-00 966, page 4, paragraph three: Whereas the "Reasons And Bases For Findings And Conclusions" states "the veteran complained of tenderness at the L4 and L5 level in 1968 as a result of an automobile accident", the document fails to mention that I enlisted and presented to the Draft Board in Albany, Georgia a medical evaluation from the attending physician stating I was fit for military service. The document further states "He was treated with muscle relaxants, low back pain exercises, and heat without much improvement." The document fails to mention, the complaint was made during basic training, was never made again during my tour of service, and that I was given a clean bill of health on my outprocessing from the service in Nov. 1971. The document further states, "In August 1981,

the veteran reported he was being treated for a slipped disc and complained of low back pain. In June , 1982, spina bifida was noted". The first indication I had of a back problem was in April 1981 at Fort Huachuca, Arizona after company exercises on the concrete slabs in from of the barracks. I experienced a sharp low back pain which upon touching felt like a bump on my spine. I reported to the medical clinic and was told that I had spina bifida by an Army doctor who told me that it was nothing to worry about and that I should do set-ups in soft turf in the future. The second indication I had of a back problem was in Germany in Jan. 1983, during company exercises, the company commander noticed I was doing the exercises improperly to which I replied, I was experiencing back pain. The company commander than told me to report to sick call. At sick call, I was told I had a possible ruptured disc and was

referred to the Army Hospital for further tests and treatment.

2. Case Docket No. 92-00 966 fails to mention: After three unsuccessful attempts to pass the physical fitness test for reenlistment in the Army, I received a bar to reenlistment due to my failure to pass the P.T. test for reenlistment. In 1984, I received notification from the U. S. Army that the bar to reenlist in the Army was a mistake, and that my reenlistment code was being changed. Also, my outprocessing physical showed I had a disability, and I was referred to the Orthopedic clinic at Ireland Army Hospital for evaluation for a medical board. I was denied a medical board.

3. Case Docket No. 92-00 966, page 4, paragraph four: Whereas the "Reasons And Bases For Findings And Conclusion" states "At VA examination in November 1983, the veteran complained of pain, stiffness, and tenderness.

No muscle spasms on motion were found. The veteran's range of motion of his lower back was essentially within normal limits." I take note of this examination, evaluation and findings for future reference. Also, the document states, "Medical reports in 1984 showed the veteran complained of low back pain. In order to alleviate the pain, the metal plates which had been placed in his low back were removed in January 1985." The document fails to mention that besides the screws attaching the bone graph from my spinal fusion in Germany, a bone spur was removed. The document then states, "In June 1985, a VA examination noted tenderness over the lumbar scar and donor site scar on the left iliac crest. Motor, sensory, and reflex testing were normal, as was straight leg raising. A neurological examination found no neurological deficits, although there was mild hyperreflexia in the right leg." I take

notice of this examination, evaluation and findings for future reference.

4. Case Docket No. 92-00 966, page 5, paragraphs one and two: Whereas the "Reasons And Bases For Findings And Conclusion" states "Magnetic resonance imaging in June 1990 revealed a marked loss of disc space at the L3/L4 level. The L4/L5 disc space showed degenerative disc disease, loss of disc height, and signal changes consistent with discogenic sclerosis. A ventral extradural defect at the disc level consistent with spur and/or disc bulging was noted.

A VA orthopedic examination in June 1991 revealed the veteran's spinal motion was severely limited for flexion, with two-thirds loss of flexion on standing, and 100 percent loss of hyperextension. The loss of side bending was noted as 50 percent. The Lasegue's tests were normal and double straight leg raising was noted as

satisfactory. Knee and ankle jerks were active bilaterally. X-ray studies showed spinal bone graft fusion of the L3 to L4 vertebra. The L4/L5 disc spaces showed sclerosis and minimal incipient osteophytosis." The document fails to mention I went to the emergency room at McGuire Veteran's Hospital in Richmond, Virginia May 1, 1990 with severe back pain. The emergency room doctor ordered x-rays for me then told me I had a possible ruptured disc and gave me a two week medical excuse from work and referred me to the orthopedic clinic for evaluation. An orthopedic doctor evaluated my back condition with x-rays and an MRI. I was told that I did not have a ruptured disc, and that if I continued at my present occupation that I would eventually be in a wheelchair, and that I should change occupations immediately, and there was no surgical remedy for me at that

time, and that he would refer me to physical therapy. I replied that at present, I was on lite-duty, and that I had no other job prospects, and that I had a family to support. I tried physical therapy, but it made my back pain worse. Since I was sure I had a ruptured disc, I sought a second opinion from Dr. Irby at the West End Orthopedic Clinic the 21st of June 1990, taking with me my VA x-rays and MRI. Dr. Irby stated to me he knew Dr. Rhodin who told me I did not have a ruptured disc and that there was no surgical remedy for my back pain, and that he, Dr. Irby concurs with Dr. Rhodin, and he, Dr. Irby referred me to physical therapy. Again, I tried physical therapy, and again, physical therapy made my back pain worse. Realizing that my back condition wasn't improving, and I was beginning to receive criticism from my employer, Tobacco Exporters International, on my job performance, I began a job search by

seeking assistance from the Virginia Employment Commission, August 1990. Since I still believed I had a ruptured disc, Oct.3, 1990, I sought a third opinion from Dr. Ayres at the West End Orthopedic Clinic, taking with me my x-rays and MRI. Dr. Ayres stated to me that he didn't think I had a ruptured disc, rather he believed I had a possible mechanical problem which could be corrected with surgery, but the MRI wasn't clear, and he asked me if a dye was used with the procedure to which I replied no dye had been used. Dr. Ayres then asked me if I wanted him to operate on me to which I replied I couldn't afford to pay him, rather I was attempting to get the VA to do the operation since I was service-connected for the problem. With Dr. Ayres evaluation, I began work on a claim for increased compensation due to the severity of my back condition through the DAV. March 1991, I bought a Jacksonville, Florida newspaper for

the purpose of searching the classified ads for employment in a warmer climate since cold weather made my back pain worse. April 1991, I applied for employment with the Jacksonville Electric Authority because they advertized that they gave job preference to disabled veterans for apprenticeship positions. June 1991, due to increasing criticism of my job performance, due to notification from the VA Rating Board that my claim had been denied, due to the State of Virginia denying me compensation because back injuries as the result of repetitive lifting was not compensatable, due to the company insurance denying me compensation because their determination was my back condition was not job related, I resigned my position with Tobacco Exporters International and moved to Florida in anticipation of obtaining employment with the Jacksonville Electric Authority. July 1991, while waiting for

notification from the Jacksonville Electric Authority, I took a job as a bus boy in a Chi-Chi's Restaurant for food money since my family and I were living off our credit card and with the assistance of the Jacksonville Veteran's Organization, working with the Florida Employment Commission, I sought gainful employment. While working as a bus boy, I experienced extreme back pain for which I sought pain medicine through the Jacksonville Veteran's Clinic. August 1991, due to the Jacksonville Veteran's Organization informing me that I was violating their rules of assistance by using my credit card to pay my car payments, and due to my severe back pain working as a bus boy, I moved to Middleburg, Florida and got a job with KRYSTALS as a kitchen crew member. September 1991, due to a KRYSTALS' Assistant Manager calling me at home insisting I work an unscheduled shift at a time I was resting my

back from a previous shift, I resigned my job with KRYSTALS. November 1991, since there was still no job offer from the Jacksonville Electric Authority, and my credit was near the limit of my credit, I moved back to Virginia where relatives could assist my family and myself because we were homeless, unemployed and deeply in debt. Also, in November, 1991, I sought assistance with the Virginia Employment Commission, Veteran's Counselor Williards who requested medical information on me from McGuire Veteran's Hospital in order that appropriate employment could be suggested to me. Also, in November, 1991, with the recommendation of a friend, I was employed by the Pinkerton Security and Investigation Organization as a security guard, with the understanding that I had a service-connected disability called degenerative disc disease that Pinkerton would have no responsibility for, should any problem occur with my back.

December 1991, I received notification from the Jacksonville Electric Authority of a job offer, and to report for an employment physical. I took leave from Pinkerton to have the employment physical in Jacksonville, Florida. The doctor who performed the physical told me that I would probably not be hired due to my back problem. I replied that JEA advertized that they give job preference to disabled veterans, to which he replied, he will try to minimize my disability as much as he could without being untruthful. January 1992, I sought assistance through the emergency room of McGuire Veteran's Hospital to have another MRI done based on the evaluation of me by Dr. Ayres, October 1990. Also, In January 1992, I received notification from the Veterans' Administration that I was to be evaluated to determine my eligibility for vocational rehabilitation, which I applied for while I was in Florida, about August 1991.

February 1992, I received notification from the Jacksonville Electric Authority, dated January 22, 1992, that JEA was withdrawing their job offer due to my failure of the employment physical. Also, in February 1992, I received from McGuire Veteran's Hospital a form entitled "Virginia Employment Commission: Employment Capacities Report" which stated "No prolonged walking". This disturbed me because the only restriction I knew about was no heavy lifting. I sought to confirm the authenticity of this document through the Virginia Employment Commission, but they claimed to have no record of any such document concerning me. Next, I sought to confirm the authenticity of the document through the Orthopedic Clinic of McGuire Veteran's Hospital. I was able to confirm the authenticity of the document in April 1992 with a written statement from Dr. Klosterman. I showed my supervisor Captain James Donovan

the document and requested not to be posted for guard duty at a certain post which in the past had taken me a full hour to walk the rounds after which, the following day, I had been noticing a particular soreness in my lower back. Also, in April 1992, an orthopedic doctor at the McGuire Veteran's Hospital reported to me that I may need surgery, fusion of L4/L5. Subsequently, my supervisor Capt. James Donovan accused me of lying about my disability when Pinkerton hired me, and further, accused me of trying to set Pinkerton up for a law suit. I reported Capt. Donovan's accusations to his supervisor, Mr. Ray Wickstrand, who took Capt. Donovan's side of the matter, and who interrogated me about my disability. May 1992, Mr. Wickstrand took me off the work schedule and put me on medical leave, and told me to bring a doctor's excuse for not working. May 6, 1992, Dr. Muron gave me a no work excuse, post dating it to May 5,

1992, the date Mr. Wickstrand put me on medical leave. Also, in May 1992, I noticed strange cars with an occupant in the vehicle parked near my home, and on one occasion, I noticed a flash coming from the vehicle, and it appeared to me the occupant was holding a camera. Also, in May while I was on medical leave, Captain Donovan called me at home, telling me I had to turn in my uniforms, I replied O.K., then I called Mr. Wickstrand, told him what Capt. Donovan said and asked Mr. Wickstrand if I was being terminated to which he replied that I was costing Pinkerton a lot of money having to pay someone to do my job. I replied that I would turn the uniforms in as soon as I was able. I reasoned that Pinkerton had me under surveillance, and I complained to Mr. Wickstrand's supervisor, Mr. Brent Fortner to no avail. June 1992, I had spinal fusion for L4/L5 at McGuire Hospital. Prior to being admitted for surgery on June 12, 1992, I had a

Pre-OP Consultation with Dr. Cunningham, who explained to me that L5 was shifting out of place which is the reason why they decided I required surgery. I asked Dr. Cunningham how long I would have to be in the hospital to which he replied that I could be released four days after surgery if there were no complications. I was operated on, June 16, 1992 from about 12 noon to 6 PM. After surgery in my assigned hospital room, I experienced extreme pain for which the pain medicine was not helping. I requested from the nurse some stronger pain medicine for which she brought me an aspirin. When I next saw Dr. Cunningham, I reported this and requested to be released from the hospital since he had told me before I had been admitted that I could be discharged four days after surgery if there was no complications, and I had not been told there were any complications. Dr. Cunningham replied maybe

tomorrow I could be discharged. When tomorrow came and I was told by a nurse that the doctor left no orders for me to be discharged, I became very agitated and needed to smoke a cigarette. I walked out of the hospital to the patio area for a smoke, but before I could smoke a cigarette, a nurse came after me, scolding me like I was a child. The next day when I saw Dr. Cunningham, I demanded to be released as he indicated before I was admitted, although by that time it was more than four days after surgery. Dr. Cunningham consented to my being discharged, and thus, I was discharged. Also in June 1992, I received a registered letter from Mr. Wickstrand, since I had refused to speak to him on the phone, stating he didn't mean to imply that I had been terminated, but Pinkerton surveillance continued in June 1992, and again I complained to Mr. Brent Fortner. When Pinkerton surveillance continued in July 1992, I decided

not to return to work for Pinkerton. In August 1992, I began a vocational rehabilitation program sponsored by the Veteran's Administration to learn to use my mind for gainful employment since my back could no longer be used for that purpose. In October 1992, I had to decrease my participation in my vocational rehabilitation program due to back pain from setting in classes for over two hours at a time, due to decreased ability to concentrate, and thus, to comprehend the lecture, and due to pain across the top of my buttocks when walking and leg tremors when climbing stairs. In April 1993, I had a Post-Op evaluation by Dr. Hopkins at McGuire Veteran's Hospital. Dr. Hopkins stated to me that I was well enough to return to work, that my back pain was due to my smoking, that a previous evaluation by Dr. Parish stated that my bone fusion might not heal due to my smoking, but Dr. Hopkins added,

my bone fusion was good. Since I disagreed with Dr. Hopkins evaluation of me, I sought a second opinion from Dr. Muron, April 28, 1993, at the West End Orthopedic Clinic, taking with me my VA x-rays and MRI, the VA Hospital had my medical records delivered to Dr. Muron. Dr. Muron stated to me that he remembers evaluating me at McGuire Hospital, and that he, Dr. Muron, concurs with Dr. Hopkins. In response to this, I have contacted Congressman Bliley's office and the office of the Tobacco Industry, Ms. Margaret Rita who referred the matter to Attorney Jim Gould, alleging wrongful action by Veteran's Administration doctors, and doctors associated with the Veteran's Administration concerning my service-connected disability for a spinal disc condition for which I am presently rated 40% disabled by the Veteran's Administration. I further stated that my back condition doesn't warrant an evaluation of well enough to return

to work, that my spinal fusion of L3/L4 in Germany in 1983 while serving in the Army has put added stress on the disc spaces below that point of fusion causing my back pain, rather than my smoking being the cause of my back pain. Now, I recall the before mentioned references to examinations, evaluations and findings which failed to lead to a correct diagnosis of my back condition by Veteran's Administration doctors and doctor's associated with the Veteran's Administration, whereas a doctor not associated with the Veteran's Administration, Dr. Ayres, viewing the same x-rays and MRI viewed by Veteran's Administration doctors and doctors associated with the Veteran's Administration, noticed a possible mechanical problem which was confirmed by the operation report of my spinal fusion of L4/L5 by Dr. Klosterman at McGuire Veteran's Hospital, Richmond, Virginia, June 16, 1992 which states "Limited foraminotomy

was then done to assess the patency of the L5 foramina underneath the pedicle. This appeared to be free". In consequence of an incorrect diagnosis of my back condition by Veteran's Administration doctors and doctors associated with the Veteran's Administration, I have suffered inappropriate medical treatment. In consequence of the Rating Board and the Board of Appeals not basing their decisions on the facts concerning my back condition, I have suffered discrimination and harassment seeking, obtaining and securing gainful employment due to a lack of understanding on my part and on the part of employers of the nature of my disability. Therefore, I appeal to the United States Court of Veteran's Appeals for consideration of my claim: Increase in disability rating due to substantial devastating effects to my health and quality of life; Increase in disability rating due to substantial and devastating

effects to my ability to seek, obtain and secure gainful employment.

Curtis J. McNaron

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1993

NO._____

Curtis J. McNaron, Petitioner

v.

Jesse Brown, Secretary

of Veteran's Affairs, Respondent

PROOF OF SERVICE

I, Curtis J. McNaron, do swear or declare (Curtis J. McNaron) that on this date, March 30, 1994, pursuant to Supreme Court Rules 29.3 and 29.4, I have served the attached Petition For A Writ of Certiorari on each party to the above proceeding, or that party's counsel, and on every other person required to be served by depositing an envelop containing the above documents in the United States mail properly addressed to each of them and with first-class postage prepaid.

The names and addresses of those served are as follows:

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Supreme Court of The United States
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The White House
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Attn: Secretary of Veterans Affairs

The United States Congress
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Washington, D.C. 20515
Attn: Speaker of the House
Attn: President of the Senate

Department of Justice

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Washington, D.C. 20530

Attn: David M. Cohen, Rm. 9030

Attn: Bryant G. Snee, Rm. 10045

Attn: Jeffrey R. Davis, Rm. 10050

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